



INTERIOR BOARD OF INDIAN APPEALS

Estate of Lyle Keoke, Sr.

36 IBIA 253 (08/01/2001)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ESTATE OF LYLE KEOKE, SR. : Order Dismissing Appeal
:
: Docket No. IBIA 01-117
:
: August 1, 2001

Appellant Charlene K. Perry sought review of an April 20, 2001, Modification of Decision issued in the estate of Decedent Lyle Keoke, Sr., by Administrative Law Judge James H. Heffernan. 1/ By order dated May 14, 2001, the Board of Indian Appeals (Board) noted that Appellant had not served any of the interested parties 2/ and gave her until June 11, 2001, to serve parties and certify to the Board that she had done so.

Appellant has failed to certify that she has served copies of her notice of appeal on the interested parties.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is dismissed for failure to prosecute.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge

1/ The Board notes that the title of Judge Heffernan's order would be misleading to individuals who are familiar with the Department's probate procedures and regulations. Under those procedures and regulations, a "modification" of a probate order has the specific meaning of an amendment of the original order either adding property to, or removing it from, the listing of decedent's trust or restricted interests, but making no substantive change to the decision. See 43 C.F.R. §§ 4.272 and 4.273.

Judge Heffernan's order was issued in response to a request from the Superintendent, Sisseton Agency, Bureau of Indian Affairs. The Superintendent stated his belief that the original order had failed to apply the Act of Oct. 19, 1984, Pub. L. No. 98-513, 98 Stat. 2411, which pertains to inheritance of trust or restricted land on the Lake Traverse Indian Reservation of North and South Dakota. The request was filed more than 60 days after the entry of the probate order. Such a request is properly a petition for reopening under 43 C.F.R. § 4.242, and the order responding to it is properly an order on reopening.

2/ Service is required by 43 C.F.R. § 4.320(a).